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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20-11-2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

C.R.P.PD.No.81 of 2006

P.Gnanasoundari ... Petitioner/I Defendant

Versus

Sri Srinivasamurthy mandiram
rep. By its Executive Trustee
No.1, Ellai Amman Koil Street,
West Mambalam
Chennai-600 033. ... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 8.12.2005 made in I.A.No.19340 of 2005 in O.S.No.9218 of 1995 on the file of V Assistant Judge, City Civil Court, madras.

For Petitioner : Mr.S.Subbiah
For Respondent : Mr.K.Shakespeare

ORDER

Aggrieved over the order dated 8.12.2005 made in I.A.No.19340 of 2005 in O.S.No.9218 of 1995 on the file of V Assistant Judge, City Civil Court, Madras this civil revision petition is filed.

2.Brief facts of the case are as follows:

Originally the petitioner's husband filed a suit in O.S.No.4771 of 1984 for permanent injunction and declaration that he was entitled to purchase the property under Section 9 of the City Tenants Protection Act. Decree was granted only in respect of permanent injunction. But, declaration sought for under Section 9 of the City Tenants Protection Act was negatived on the ground that the suit was filed by the landlord not for ejectment of the tenant and therefore Section 9 of the City Tenants Protection Act cannot be invoked. Thereafter the petitioner's husband died on 23.10.1989. The respondent/plaintiff filed O.S.No.9218 of 1995 for a declaration that the petitioner is a trespasser. Originally the said suit was filed

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before the High Court and thereafter it was transferred to the City Civil Court and renumbered as O.S.No.9218 of 1995, on 22.2.1995. On 12.4.1996 the petitioner filed an application under Section 9 of the City Tenants Protection Act. On 19.6.1996 the petitioner entered appearance. Application filed by the petitioner, was returned on 27.8.1996. Thereafter issues were framed and parties were examined. Arguments of both sides were also over. At this stage, the petitioner filed an application in I.A.No.19340 of 2005 to reopen the case and to decide the same under Section 9 of the City Tenants Protection Act.

3.The learned V Assistant Judge, City Civil Court, Chennai, dismissed the same on two grounds. Firstly, the application is not filed within 30 days from the date of service of summons or from the date of appearance in court. Secondly, the husband of the petitioner earlier filed a suit in O.S.No.4771 of 1984 for declaration and that was negatived as he is not entitled for declaration under the City Tenants Protection Act and therefore as per the earlier judgement the claim now made by the wife is hit by the principles of res-judicata.

4.Aggrieved over the said order this civil revision petition is filed.

5.Mr.S.Subbiah, the learned counsel appearing for the revision petitioner would contend that an application filed by her under Section 9 of the City Tenants Protection Act was neither returned nor numbered and it is simply kept pending. He would further contend that the judgement rendered in O.S.No.4771 of 1984 filed by the husband of the petitioner, would not operate as a res-judicata for the present claim of the petitioner because in the said judgement the prayer for declaration under the City Tenants Protection Act was negatived only on the ground that the suit is not filed by the landlord for ejectment of the tenant.

6.Section 9 of the City Tenants Protection Act reads as follows:

> "Application to Court for directing the landlord to sell land.--((1)(a)(i)) Any tenants who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceedings under Section 41 of the Presidency Small Cause Courts Act,1882 (Central Act XV of 1882), taken by the landlord may (within one month of the date of the publication of the (Chennai) city Tenants' Protection (Amendment)Act, 1979 in the Tamil nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate, or within (one month) after the service on him of summons, apply to the court for an order that the

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landlord shall be directed (to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the application."

7.As per Section 9 of the City Tenants Protection Act, when the landlord files a petition for ejectment, then only right comes to the tenant to file an application to purchase the property and on filing such application the court may decide whether the tenant has got right to purchase the property and also to ascertain how much land is required for sale at the acceptable price. Admittedly, the suit was not filed by the landlord for ejectment, but by the tenant for permanent injunction and declaration. The judgement was rendered in O.S.No.4771 of 1984 holding that the plaintiff (husband of the petitioner) is not entitled for declaration simply on the technical ground that the suit was not filed by the landlord.

8.Mr.Shekspeare, the learned counsel appearing for the respondent would contend that though the petitioner had entered appearance on 19.6.1996, she has filed the application on 27.8.1996, with a delay of more than 30 days and therefore, the application could not be considered. His further contention is that for the last 9 years, the petitioner has not cared to pursue the application and thus, it is time barred and hit by latches in filing the application.

9.Heard the rival contentions of the both sides. As far as the delay in re-presentation is concerned, normally delay in re-presentation is condoned by all the courts. Even if there is any delay in re-presentation of the application, the learned Judge ought to have passed an order as to whether the delay is condoned or not. Unfortunately in this case, the learned Judge has not passed any order either returning the application filed by the petitioner, or ordering to number it.

10.Considering the nature of the application whereby the party prays a relief only under Section 9 of the City Tenants Protection Act, it should be tried as preliminary issue and then an order must be passed. Unfortunately in this case as already stated the application was kept idle without either being returned or being numbered. It is true that the application was filed with a delay in re-presentation of the same. The application was presented on 12.4.1996 within the time as required under Section 9 of the City Tenants Protection Act. What the Act requires for filing of the application is within 30 days from the date receipt of summons. As far as the date of filing of this application is concerned, it is 12.4.1996. Therefore there is no dispute that the application was filed in time. But in re-presentation there was a delay.

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11.The reasoning given by the learned judge for dismissing the application is that by the judgement rendered in the earlier suit filed by the husband of the petitioner in O.S.No.4771 of 1984 for permanent injunction and for declaration, the relief of declaration was negatived, since the suit was not filed by the landlord and therefore the first defendant in the present suit in O.S.No.9218 of 1995 cannot raise the same issue as it is hit by the principles of res-judicata.

12.It is not disputed that the petitioner is none other than the wife of the plaintiff in O.S.No.4771 of 1984 filed for declaration under Section 9 of the Madras City Tenant Protection Act. The suit was negatived on the sole technical ground that it was not a suit filed by the landlord against tenant for ejectment. Since the earlier prayer sought for by the husband was negatived only on the technical ground that the suit was not filed for ejectment by the landlord, now the judgment cannot operate against the present claim of the petitioner,who seeks protection under the City Tenants Protection Act, when the suit is filed by the landlord.

13.Therefore, the reasons given by the learned V Assistant Judge, City Civil Court,Chennai, are not sustainable and this civil revision petition is allowed. No costs. The learned V Assistant Judge is directed to dispose of the petition filed by the petitioner under Section 9 of the City Tenants Protection as a preliminary issue and then proceed with the trial of the case. Consequently the connected C.M.P.No.829 of 2006 is closed.

14.The learned Vth Assistant Judge, City Civil Court, Chennai shall pass order in the said application without being influenced by any observation made by this Court in this petition.

VK

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1 The V Assistant Judge,
City Civil Court, Chennai.

2 The Section Officer,
V.R.Section, High Court,
Madras

+1 C.C. to M/S.A.V.ARUN,Advocate SR.No.56482

+1 C.C. to MR.K.SHAKESPEARE, Advocate SR.No.56464

KG (CO)
TES (08/12/2006)

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